Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

October 5, 2011

Re: Fifth Draft Plan

Dear Chairman Isenberg and Members of the Council:

I am writing to express my concerns regarding the Delta Stewardship Council (Council) release of the Fifth Draft Plan (Delta Plan). I believe all reasonable Californians would agree that we need to work together for a better California. This includes water supply reliability and a healthy Delta ecosystem with adequate protection for listed species. The physical risks to the Delta from earthquakes, floods and sea level rise are real and we cannot ignore them and think that they will go away. Thank you for the previous draft updates and Delta Plan improvements made to date.

It is a challenge for the average California citizen to keep informed of all the changes to the Delta Plan which may turn out to be one of the most significant documents produced by the State in years. Due to the importance of this process for California's water, and its policy implications, I have decided to submit the following comments:

P.3, l.25 – The Delta Plan discusses the coequal goals of water supply reliability and Delta restoration, yet by default, through its limited focus, the Delta Plan supports the unequal goal of transferring northern California's water, and thereby its wealth, to the export community south of the Delta. It creates a scenario of environmental and economic injustice for California citizens upstream of the Delta.

P.6, l.42- In the Delta Reform Act the Legislature gave the Council specific authority that did not include the ability to regulate those who exclusively use water upstream of the Delta." The Delta Plan recommends flow standards, user fees, stressor fees, and red tape for amendments to water rights, all of which will have foreseeable negative economic development impacts for upstream water users in perpetuity as proposed in this document. The Delta Plan and subsequent actions and programs must be paid for by the beneficiaries of the water exported from the Delta. The beneficiaries are defined as those water agencies, their customers, and other users receiving water in the "tan areas" of Figure 1-1 on Page 16.

P.14, l.5 – "The Delta Reform Act specifically calls for reducing "reliance on the Delta through a statewide strategy of investing in improved regional supplies,..." The Sacramento region has worked on its own regional water supply issues. Through the middle and late 1990s the water purveyors in the Sacramento region labored to create the Water Forum Agreement (WFA) of 2000. The WFA identified seven elements for the common good. One such element is the Lower American River Flow Standard. The Delta Plan, through the proposed major tributary flow standard jeopardizes this locally agreed river flow element.

P.25, l.17 – "Population of California. To increase from 39.1 million in 2010 to 59.5 million by 2050." An analysis needs to be done to determine where the new population will live. The analysis could be performed through the Department of Finance by looking at the General Plans for each County, upstream of the Delta, through 2050. Then an apportionment of the San Joaquin and the Sacramento River waters, much like the Colorado River Basin Accord, would allocate water to both sides of the Delta.

P.57, l.4 – The Plan talks about "covered actions". It would be extremely helpful if the Delta Plan defined this term from a legal standpoint. Maybe even give some examples. As currently written this concept is very confusing, and, therefore, difficult to determine the Delta Plans impacts to those entities upstream of the Delta.

P.64, Bottom paragraph – "The longstanding constitutional principle of reasonable use..." This statement indicates the bias of the Delta Plan's designers. The statement glosses over other more senior water rights laws. Generally, one would think that older laws would carry the more significant weight of "past practice". The Association of California Water Agency's newsletter of June 4, 2010 contained an article entitled *'How the Association Fought the Law, and Won IDA a Key Player in Developing Principle of 'Reasonable and Beneficial Use'.* The article points out that California Legislature in 1850 adopted most of the tenants of English Common Law, including "riparian rights" and principle of "first in time – first in right". The reasonable and beneficial use principle did not become law until 1928 after two other unsuccessful challenges of existing law.

P.70 - The water supply illustration does not include the Colorado River water inflows in its statewide analysis.

P.84, l.34 – WR R5 This recommendation creates an added layer of inflexible process and costly bureaucracy. It adds to the burden of local upstream water districts, and does not create any new water. Requirements such as WR R5 lead to higher governmental operating costs, and exacerbate the State's fiscal crisis. WR R5 is an example of the DSC overstepping its authority and needs to be analyzed by the Office of Administrative Law (OAL).

P.86, l.10 – ER P1 (a). The most critical impact of the Delta Plan is water flows from northern California. The Council is scheduled to have its final EIR completed in December, 2011. The Council's policy ER P1 a) calls for updated flow objectives by June 2, 2014. Therefore, the Delta Plan and the Final Environmental Impact Report (EIR) cannot be complete or adequate without prior knowledge of river flows upstream of the Delta.

P.86, l.13 – ER P1 (b) - This policy calls for the development of flow criteria for high priority tributaries by June 2, 2018. Although not specified in the Delta Plan, it is very likely that the American River will be a target for the ER P1 (b). The Sacramento WFA of 2000 has the Lower American River Flow Standard as one of its common elements. Over 10 years have passed, and the Lower American River Flow Standard has not been completed. The policy of placing another call on the American River flows is a real challenge for our region. The Lower American River is already over allocated.

P.88, ls. 8:18 – The water supply benefits described in this section are many of the same benefits provided by upstream water users. Water facilities upstream of the Delta provide flood control, electrical power, reservoir storage capacity, food production, municipal and industrial uses, recreation, conjunctive use storage, etc. as part of our beneficial uses of water. Yet, these same beneficial uses of water are considered "stressors" on the Delta. In this section of Chapter 4, these beneficial uses are considered to be in the best interest of the people of California, and I agree with that assessment.

P.92, l.3 – about 60 MAF of groundwater has been lost in the San Joaquin Valley. Please place this number in the context of total groundwater storage capacity in the valley or the in State as a whole.

P.97, l.5- Administrative Performance Measures – "Adoption and implementation by SWRCB of Bay-Delta Water Quality Control Plan flow objectives by 2014". The Final EIR for the Delta Plan cannot be complete or adequate without prior knowledge of river flows upstream of the Delta.

P.112, l.31. "Creating a more natural flow regime in the Delta is an important step in meeting the coequal goals.." However, the more natural Delta flow regime should not come from increased flow risk, reduced agricultural output, reduced area of origin and county of origin water rights. The Delta Plan appears incomplete and inadequate since it does not describe Delta flow impacts of an alternative conveyance facility. Adding a 15,000 cubic feet per second alternative conveyance facility intake in the Sacramento River would immediate and direct impacts to the natural flow regimes of the Delta, especially in below average rain years.

P.114, ls.4:7 – "Recommend that the State Water Resources Control Board cease issuing water rights permits..." This recommendation is overreaching, unnecessary and will only serve to add a new layer of unnecessary expense to local water districts. It has been suggested that the Delta flow patterns of the 1990s was pretty well balanced. Please substitute the water flow criteria from the 1990s for the second recommendation.

P.126, l.7 – Add. (7) Restore special status species to population levels above those achieved in the 1990s.

P.162, l.1 - "Reoperation of upstream reservoirs and peak flow attenuation". It is not clear whether the reservoirs that will be reoperated will be federal, State, local or private sector reservoirs (ie. PG&E). Please clarify.

P.185, ls. 27:31 – RR R12. This recommendation may need to be scrutinized by the OAL because of the overreaching regulatory impacts. Reoperation of upstream reservoirs could create significant opportunity costs for local water districts. Mitigations measures should be adopted to reduce these costs to less than significant if reservoir reoperations are required, under the yet to be promulgated requirements.

P.196, l.17 – "To protect people, property and the State interests in the Delta, the Legislature has directed State agencies to assist with maintaining the socioeconomic sustainability..." The Delta Plan recognizes that implementation the Delta Protection Act may *harm* some segments of the Delta.

Unfortunately, the Delta Plan does not recognize that implementation of Delta Plan's requirements may also harm upstream communities and the utilities that serve them.

This is a matter is of grave concern. Under the California Environmental Protection Act, socioeconomic impacts are not required to be evaluated. Therefore, neither are the negative economic impacts required to be mitigated. The economic sustainability of the upstream water users is not considered by the Delta Plan.

Water supply reliability below the Delta will mean reduced water supply reliability above the Delta. The law of supply and demand dictates that if supply goes down above the Delta, costs for water will rise above the Delta.

All ships are not rising together in this tide.

P.206, l.4 – Please clarify what is meant by "new statutory authority" in the Finance Plan.

P.206, l.12 – " A companion principle to the "beneficiary pays" is "stressor pays". The beneficiaries (Delta exporters) are the major stressors of the Delta. Their impacts are immediate and direct. An example is the reverse flows in Old and Middle Rivers of up to 6,000 cubic feet per second. This effect, directly proportional to export pumping causes, increases water temperatures, decreases dissolved oxygen, results in longer residence times, increases the chance for predation of desired fish species, increases salinity, reduces flushing of unwanted invasive species, and reduces water quality dilution factors.

The upstream water users are part of the "solution area", not part of the "problem area". The reasonable and beneficial uses of water by California citizens upstream of the Delta are being mischaracterized as Delta stressors. Upstream users provide ecosystem services such as flood control, temperature control, watershed stewardship, health forest management practices, salmonid restoring projects, upstream storage capacity, etc. Our beneficial uses create jobs, agricultural commodities, electrical power, habitat, recreational opportunities, and water for our local economies. Past State and federal permitting process of upstream facilities have already contributed to environmental flows, mitigation measures and other facilities permitting requirements that enhance the environment of the State of California.

The prevalent model for the amount of snow in the Sierra through the end of the century are that there will be less snow pack in the Sierra, and more rain falling at lower elevations. With this scenario increased investment in the watersheds and greater use of best management forest practices will take on greater importance. Rather than removing wealth from the upstream watersheds, Delta exporters would be wise to invest sustainable forest management practices, in partnership with the upstream water agencies, to enhance natural watershed storage capacity.

P.206, l.34 - The need for a "user fee" is in appropriate. The Delta Plan needs to exclusively support the beneficiary pays principle. The beneficiary pays principle is simple and will less likely to be challenged by a Proposition 218 protests.

P.208, l.17 – If the Delta levees are in immediate need of repair, because the water supply reliability of 25 million people is in jeopardy, then a 70 percent unimpaired flows through the Delta may be catastrophic during high water years. If the Delta levees are in immediate need of repair, because the water supply reliability of 25 million people are in jeopardy then the beneficiaries of these repairs are those 25 million people, and not every water user in the State. Again, upstream facilities are part of the solution to this problem and not stressors to the Delta levees.

P.210, l.12 – is under development and not available for comment.

P.211, l.19 – User fees. The Legislature should levy a "mill-fee" on all water users within the "tan" area on Page 16, Figure 1.1, to support the Delta Stewardship Council.

If the Delta Stewardship Council requires $50 million dollars per year to operate, and 25 million people will be the beneficiaries of the DSC's actions, then if each person pays $2 dollars per year, the Council will be funded! It is estimated that the cost will be approximately 3 mills (.003 cents) per person per gallon. This fee should have a sunset provision.

$$\frac{200 \text{ cents/y}}{200 \text{ gals/d} \times 365 \text{ d/y}} = .00274 \text{ cents/gal}$$

P.211, l. 33 - FP R7 The Legislature should amend the California Constitution to give water agencies, and others effected by the beneficiary fees, Proposition 218 protest immunity for costs associated with the DSC's actions.

P.212, l.9 – The Public Goods Charge is not a good idea. If the Public Goods Charge is applied to all water users in the State, it is a tax. The Delta Plan, and subsequent activities, should be paid through the beneficiary pays principle which is a fee based assessment.

General Comments

The Plan does not consider the basic biological principles of population dynamics, and the carrying capacity of the State's lands and water and whether we are engineering a sustainable future for all of California.

The Plan did not discuss how archaic the current Delta water transport system, with fish louvers rather than fish screens, pumping from the San Joaquin (15% of Delta flow) rather than the Sacramento River (85% of Delta flow).

The Plan does not discuss the impacts of the Delta on the San Joaquin River Settlement Act (S 27, May 2007).

The Plan does not discuss how water management in the Delta would be impacted if the Little Hoover Commission's Report on State Water Management (September 2010).

The Plan does not recognize the potential for increasing salmonids by working with local, upstream salmon restoration efforts such as those on Butte Creek or the Auburn Ravine.

The Plan neglects to mention the key linkage between water supply development and growth inducing impacts. After the passage of SB 610 (2001), developers are required to prove they have a dedicated source of water. The coequal goal of water supply reliability will help to satisfy the legal requirements of SB 610.

The Plan has very few project details or associated costs.

I agree with the Independent Science Boards comment that the reduction of 20 percent of water usage by the year 2020, while not addressing a restriction on water demand, may lead to a hardening of demand that places the State in greater jeopardy in future dry years.

"Reducing Reliance on Delta Water: the legislation and the Delta Plan set a goal of reducing State reliance on water from the Delta. This could involve reductions in total exports, reductions in net use upstream, reductions in in-Delta use, changes in timing of use, or all of the above. Yet the Delta Plan principally focuses on regional self-reliance through improved efficiency, conservation, re-use/recycling programs, development of local sources, better accounting, etc. Although it seems obvious that improvements in regional supplies will reduce pressure on the Delta, the specific connection between the two is not made well. For example, reductions in per-capita use of water in urban settings CAN make more water available for consumptive use. In most urban environments, however, this "new" water is used to support growth and, thus, no net decrease in overall regional consumption of water. Indeed, the growth in number of water users can **lead to hardening of demand**, resulting in no reduction in pressure or **even more pressure on the Delta.** The same can occur in agricultural settings where increases in water use efficiency can lead to planting of more acreage (including the current trend of perennial crops) and no net reduction in regional water consumption."

"What Happened to the Delta Watermaster? The 2009 legislation created the Delta Watermaster, who will oversee the day-to-day administration of water rights, enforcement activities, and reports on water right activities. This individual could be one of the most important links to the SWRCB and has the potential to be integral to achieving the co-equal goals. However, with the exception of passing mention in a table, the Delta Watermaster is **not a part of the Delta Plan.** If this is not simply an oversight, then the reasons should be clearly articulated. "

Thank you for the opportunity to comment on the Delta Plan. I look forward to reviewing and commenting on the environmental impact report.

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